IN THE

SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1976

No. 76-1757

PIERRE J. WESSEL,

Petitioner,

v.

PENNSYLVANIA STATE BOARD OF LAW EXAMINERS,

Respondent.

PETITION FOR A WRIT OF CERTIORARI TO THE SUPREME COURT OF PENNSYLVANIA

DAVID J. ONTELL

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No.

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PENNSYLVANIA STATE BOARD OF LAW EXAMINERS,

Respondent.

PETITION FOR A WRIT OF CERTIORARI TO THE SUPREME COURT OF PENNSYLVANIA

The petitioner, Pierre J. Wessel, respectfully prays that a writ of certiorari issue to review the decision of the Supreme Court of Pennsylvania entered in this matter on March 11, 1977.

OPINIONS BELOW

On December 14, 1976, the Respondent denied Petitioner's request to take the bar examination, stating in a brief letter dated December 16, 1976, that Petitioner ". . . did not complete the study of law in a

law school accredited by the American Bar Association even though (he has) been admitted to the Bar of the District of Columbia." Petitioner appealed to the Supreme Court of Pennsylvania; that appeal was denied, without oral argument or opinion, on March 11, 1977, one judge dissenting.

JURISDICTION

The order preventing Petitioner from taking the Pennsylvania Bar Examination was issued December 14, 1976. A timely appeal of the order was taken directly to the Supreme Court of Pennsylvania. That court affirmed the decision of the Respondent on March 11, 1977. Petitioner seeks review in this Court under a grant of jurisdiction contained in Title 18, U.S.C., Section 1257. He has filed a petition for Writ of Certiorari within ninety (90) days from the last decision of the Supreme Court of Pennsylvania.

QUESTIONS PRESENTED

The questions presented by the decision of the Supreme Court of Pennsylvania are:

1. Whether or not the failure of the Supreme Court of Pennsylvania to give a reason for its decision denied to the Petitioner "due process of law" as guaranteed by the Fifth and Fourteenth Amendment to the United States Constitution.

2. Whether or not the "equivalency" provision of Rule 8-C-2 of the Rules Relating To Admission To The Bar Of the Supreme Court Of Pennsylvania, which has been interpreted to apply only to students attending law schools in foreign countries, violates the "equal protection" clause of the Fourteenth Amendment to

the United States Constitution, in that it denies the same chance to those in domestic schools, and unfairly discriminates between schools accredited by the A.B.A. and those not so accredited.

3. Whether or not secret interpretations of administrative rules violate "due process of law" as guaranteed by the Fifth and Fourteenth Amendments to the United States Constitution.

4. Whether or not the Respondent's decision, without hearing or reasoned opinion, not to permit Petitioner to take the state bar examination denied him "due process of law" as guaranteed by the Fifth and Fourteenth Amendments to the United States Constitution.

CONSTITUTIONAL PROVISIONS AND RULES INVOLVED

1. The Fifth Amendment to the Constitution of the United States: "No person shall . . . be deprived of life, liberty, or property, without due process of law."

2. Section 1 (one) of the Fourteenth Amendment to the Constitution of the United States: ". . . (N)or shall any state deprive any person of life, liberty, or property, without due process of law; nor deny to any person within its jurisdiction the equal protection of the laws."

3. Rule 8-C-2 of the Rules Relating to Admission to the Bar of the Supreme Court of Pennsylvania: "To qualify for the bar examination an applicant . . . shall have completed the study of law in a law school accredited by the American Bar Association; or shall have acquired a legal education which in the opinion of the State Board is the equivalent."

STATEMENT OF THE CASE

This is an appeal by Petitioner, Pierre J. Wessel, from an order of the Supreme Court of Pennsylvania, denying his petition to take the Pennsylvania bar examination under the provisions of Rule 8-C-2 of the Rules Relating to Admission to the Bar of the Supreme Court of Pennsylvania.

Petitioner attended Temple University School of Law for three (3) years, taking eighty-one (81) credit hours and obtaining an overall average of 1.90. Although he did not fail any courses, he did not graduate because a 2.00 overall average is required. Petitioner experienced difficulties in a personal relationship which worked to the detriment of his class work during his final year. He petitioned the full faculty for permission to remain an additional semester, to give him the time to pull up his grade average to enable him to graduate. After a fifteen (15) minute hearing, the faculty committee, without opinion given, denied his request.

Petitioner applied to other A.B.A. approved law schools, but was not accepted as a transfer student because of the A.B.A. policy requiring that a transfer student have left his previous school in "good standing"; nor was he permitted to begin his studies anew. He was finally accepted by the International School of Law, which was accredited by both the District of Columbia and the Commonwealth of Virginia, though not the A.B.A. International accepted forty-one (41) credit hours from Temple and with the forty-four (44) additional credit hours taken Petitioner graduated with a 2.78 overall average in May, 1976. He took the District of Columbia bar exam in July, 1976, and was among the fifty-five percent (55%) who passed.

In March, 1976, Petitioner requested Respondent's permission to take the bar examination in Pennsylvania that summer. By letter, dated April 22, 1976, Respondent told him they could not act on his request until "regulations and procedures" were developed for determining "equivalent" education under Rule 8-C-2, a rule enacted only three months before.

On December 1, 1976, Petitioner's request was denied, Respondent stating:

> The Supreme Court of Pennsylvania has indicated to the State Board of Law Examiners that the "equivalence" rule applies only to graduates of law schools which are not subject to A.B.A. accreditation. Consequently, the State Board has determined that an applicant for the Pennsylvania bar examination who is a graduate of an American law school must have been graduated from an A.B.A. approved school.

Ten days later Petitioner supplemented the facts of his original request, advising Respondent of his graduation from International School of Law and of his admission to the bar of the District of Columbia. Respondent, by letter dated December 16, 1976, informed Petitioner that they denied his renewed request "inasmuch as (he) did not complete the study of law in a law school accredited by the American Bar Association." At no time was Petitioner given a hearing or allowed to demonstrate the equivalency of his education before Respondent.

On January 11, 1977, Petitioner filed and served his notice of intention to appeal the Board's order in accordance with Rule 14-B of the Rules Relating to Admission to the Bar of the Supreme Court of Pennsylvania. On January 17, 1977, the Board filed a

one page statement of its action. Petitioner filed his brief. The Board did not file a brief in reply. On March 11, 1977, the Supreme Court of Pennsylvania, without reason given denied Petitioner's appeal; one Justice dissented.

REASONS FOR GRANTING THE WRIT

I.

THE SUPREME COURT, BEING THE HIGHEST TRIBUNAL IN THE COUNTRY, HAS THE ULTIMATE RESPONSIBILITY FOR SUPERVISING AND MAINTAINING THE QUALITY OF JUSTICE; THAT QUALITY AND THE ADMINISTRATION OF JUSTICE SUFFER GREATLY WHEN APPELLATE COURTS DECIDE CASES WITHOUT OPINION; THE PROBLEM AFFECTS MANY PEOPLE.

The problem of how much explanation one must receive in an opinion by a court has been under consideration in various ways since the beginning of our republic.[1] With the advent of the proliferation of functions for adjudicatory systems the citizen meets the problem on a continuing basis. Since so much of our lives are given up to both administrative and judicial agencies it is time for this court to set standards in terms of "due process" as to when these agencies of discretion, of whatever type, shall be called upon to provide rationales for their opinions.

The rise of decisions without opinions attached to them is no where more apparent than in the United States courts of appeals.

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[1]See Respublica v. Doan, 1 U.S. 86, 1 L.Ed. 47 (Pa. 1794), at which it is said "...Judges do not hold themselves bound to assign any reasons for their judgement; and when they do give reasons it is always in public," at page 49.

Opinions and memoranda filed in cases disposed of in the United States courts of appeals during the fiscal years from 1970-1976.[2]

Year	Total cases terminated	Cases terminated by consolidation	Total cases terminated less consolidations	Disposed of without oral hearing or submission on briefs			Disposed of after oral hearing or submission on briefs			
				Total	No written opinion[1]	Memorandum filed	Total	Signed opinion	Per Curiam opinion	No written opinion[1]
1970	10,699	1,077	9,622	3,483	2,841	642	6,139	3,195	2,179	765
1971	12,368	1,371	10,997	3,391	2,998	393	7,606	3,336	3,122	1,148
1972	13,828	1,373	12,455	3,918	3,600	318	8,537	3,468	3,674	1,395
1973	15,112	1,552	13,560	9,942	3,584	358	9,618	3,377	3,886	2,355
1974	15,422	1,936	13,486	5,035	4,144	540	8,451	3,235	3,164	2,052
1975	16,000	1,925	14,075	4,998	4,551	447[2]	9,077	3,592	2,333	3,152[2]
1976	16,426	1,861	14,565	5,214	3,642	1,572	9,351	3,644	1,717	2,749

[1] Includes cases disposed of from the bench, by court order without opinion, and by consent of the parties after settlement.
[2] Denominated "Other."

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[2]These figures were compiled from Reports of the Judicial Conference of the United States for the years 1970 to 1976.

The above is ample illustration of the problem. It is no doubt present in the state courts and administrative agencies too. The statistics from a few representative states demonstrate the pervasive quality of the problem. Just as the table above is for the federal courts, for which figures are available, so the tables give us an indication of the situation in the state courts. While extrapolation to the myriad lower courts is impossible it is no wild leap of the imagination to appreciate the magnitude of the practice.

Texas Courts of Civil Appeals – Statistics 1975[3]

Cases dismissed:

with opinion	102
without opinion	168

Cases otherwise disposed of:

with opinion	105
without opinion	34

Statistical Report – Supreme Court of Pennsylvania, 1971-1975[4]

	No. Appeals Filed	No. Cases Opinions Filed
1971	763	737
1972	761	397
1973	740	602
1974	883	633
1975	828	561

[3]Texas Judicial Council – Forty Seventh Annual Report (1975), p. 112.

[4]Administrative Office of Pennsylvania Courts, 1975 Report, p. 48.

California Supreme Court Business Transacted[5]

	70-71	71-72	72-73	73-74	74-75	75-76
Appeals:						
written opinion	116	86	117	79	105	112
without opinion	11	7	2	4	1	6

The above tables are most fragmentary and random. Statistics on states are difficult to gather and frequently their forms are not precisely applicable to the questions presented here, but surely even these few examples show the depth of the problem.

But merely to say that a problem is wide spread does not capture its real impact on our lives. That impact is felt most in the decr .se of respect for the law and government and the questions such practices generate in the minds of average citizens who must be subjected to the courts through no fault of their own. These feelings of resentment and powerlessness are not amenable to description in tables, nor is the questionable appearance resulting when summary procedures are used to decide cases which are singular and microscopic with relation to the mass but which to the people concerned mean everything. "The Constitution recognizes higher values than speed and efficiency."[6]

Put succinctly, "(t)he functions of an appellate opinion are to state the law, to mollify the litigants,

[5]Annual Report of the Judicial Council of California – 1977, Table II; it should be noted that Cal. Const., art. VI, §14 requires decisions of the California Supreme Court to be "in writing with reasons stated." Only original proceedings are disposed of without opinion.

[6]Stanley v. Illinois, 405 U.S. 645, 656 (1972), quoted in Mildner v. Gulotta, 405 F. Supp. 183, 218 (dissent Weinstein, J.) (E.D.N.Y. 1975)

and to make judges think."[7] "When a judge need write no opinion, his judgment may be faulty. Forced to reason his way step by step and set down these steps in black and white, he is compelled to put salt on the tail of his reasoning to keep it from fluttering away. . . . Holmes said that the difficulty is with the writing rather than the thinking. (We are) sure he meant that for the conscientious man the writing tests the thinking."[8]

In the context of our case it is particularly important to remember that the Pennsylvania Supreme Court was the body that both made and interpreted the rules. This is not the case of a court interpreting the acts of another body, but of itself. If only to insure objectivity, where self interpretation is concerned reasoned opinions become even more important.

Pennsylvania has exempted only the Respondent from the strictures of their administrative procedure act, while including forty-eight (48) other agencies.[9] A reasoned opinion for the court's affirmance of Respondent's denial of Petitioner's request will supply that ballast of "due process" which the administrative procedure act is for other state agencies. Lawyers and would-be lawyers are citizens too; they deserve due process like everyone else.[10]

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[7]Lasky, Observing Appellate Opinions from Below the Bench, 49 Calif. L. Rev. 831, 832 (1961) quoted in Leflar, Appellate Judicial Opinions (1974) at p. 84; Chapter 4 of Professor Leflar's book contains particularly cogent comments on the need for opinions.

[8]See Lasky, A Return to the Observatory Below the Bench, 19 S.W.L.J. 679 (1965).

[9]See 71 Purdon's Pennsylvania Statutes Annotated, §1710.51.

[10]See Mildner v. Gulotta, cited supra n. 6; the dissenting opinion per Weinstein, J. thoroughly develops the entire area of the need for due process through written opinions; See 405 F. Supp. 183, 215-233.

When considering the effects of our question on the administration of justice we are well aware of the role which summary disposition plays in keeping the courts functional. Rule 52(a) of the Federal Rules of Civil Procedure allows disposition without opinion. This is necessary though even it is subject to some limitation;[11] besides, such rulings have no precedential effect and the requirements of Rule 56 provide the superstructure of reason. Rather than require that everything be decided by written opinion, we urge a standard that where one has an appeal of right he has an opinion of right.

The nature and scope of that opinion can be governed by a discretion measured by the commands of the "reasonable man" and reviewed by standards used to gage "abuse of discretion." While these standards will be enforceable more often only against administrative agencies and lower courts, by the highest court of a state, the very enunciation of some standard by this court will have the most salutory effect even on those courts and bodies which are difficult to reach.

Although consideration of the question has been with American courts at least since the time of *Respublica v. Doan*, supra, recognition of the dispute over the necessity for reasoned opinion as affecting the administration of justice and the functioning of the appellate process was given fresh impact in recent years

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[11]The limitations of Rule 52(a) can be seen in litigation involving the Freedom of Information Act, Title 5 U.S.C. §552(b) et seq., where the court may, because of the nature of the litigation, be required to render findings on a summary judgment; see Schwartz v. Internal Revenue Service, 511 F.2d 1303 (D.C. Cir. 1975).

by the lively exchange in *Taylor v. McKeithen*, 407 U.S. 191 (1972).[12]

In one of the most recent considerations of the appellate process the authors Carrington, Meador and Rosenberg placed reasoned opinions in their pantheon of "process imperatives."[13] As they said so well it bears quotation:

> When reasons are announced and can be weighed, the public can have assurance that the correcting process is working. Announcing reasons can also provide public understanding of how the numerous decisions of the system are integrated. In a busy court, the reasons are an essential demonstration that the court did in fact fix its mind on the case at hand. An unreasoned decision has very little claim to acceptance by the defeated party, and is difficult or impossible to accept as an act reflecting systematic application of legal principles. Moreover, the necessity of stating reasons not infrequently changes the results by forcing the judges to come to grips with nettlesome facts or issues which their normal instincts would otherwise cause them to avoid.[14]

In a country priding itself on "the rule of law" some guidelines are needed to flesh out that part of "due process" which involves the discretion of the decider, be it judicial or administrative, to rule without reason.

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[12]In this case the problem directly confronted the court. See too, Northcross v. Memphis Board of Education, 412 U.S. 427 (1973).

[13]See Carrington, Meador and Rosenberg, Justice On Appeal (1976); this work considers the question raised in this petition with great depth.

[14]Ibid, p. 10.

If the court should rule against Petitioner, there will be, at last, from the highest source, a rationale, the most definitive, which can be told clients as to why a court can do such a thing yet still be said to participate in "due process" and "the rule of law."

II.

THE DECISION OF THIS COURT INVOLVING THE RIGHT OF A STATE TO RESTRICT ENTRY INTO THE LEGAL PROFESSION EFFECTS THOUSANDS OF PEOPLE AND THE FUTURE FORM THE PROFESSION WILL TAKE.

The ability or inability of people to take the bar examination after attendance at law schools not approved by the A.B.A. has impact on thousands of potential lawyers. As of 1976, the A.B.A. reported the existence of at least 65 law schools not approved. These schools are located in 12 different states, though over half are in California. Only six of these schools chose to report their enrollments to the A.B.A. The 1975 figures showed 5501 students enrolled in just those six law schools.[15]

If Pennsylvania or any other state can stop these people from being lawyers then an important source of that profession will have been cut off. The effect is at once obvious and profound. These people will be cut off from their "pursuit of happiness" in a profession of their choice; they will be prevented from travel by their inability to enter their profession in many states; their freedom to associate in a way of life will be a nullity.

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[15]See, American Bar Association, 1975 Review of Legal Education, pp. 37-43.

But more than that, they will be cut off from their chance for entry into the "American aristocracy."

> In America there are no nobles or literary men, and the people are apt to mistrust the wealthy; lawyers consequently form the highest political class and the most cultivated portion of society. They have therefore nothing to gain by innovation, which adds a conservative interest to their natural taste for public order. If I were asked where I place the American aristocracy, I should reply without hesitation it is not among the rich, who are united by no common tie, but that it occupies the judicial bench and the bar.[16]

This expression by Alexis De Tocqueville of the lawyer's preeminence in American society is true to a large extent even today.[17] The large numbers of public officials and leaders in the community who are lawyers attest to this. America is a land of lawyers. There are ten times more here than in Britain – a country with 1/4 our population.

It is important to emphasize Petitioner, an attorney already, does not plead to be made a Philadelphia lawyer instantly. All he desires is a chance to get in line with others to undergo the rigors of the bar examination. The exam is the door through which all must pass; if the Pennsylvania Supreme Court can delegate the choice of who will get to the threshold, to the A.B.A., a group, unelected, not subject to check by the people of the state and which has in its membership barely half the lawyers in the country, then the democra-

[16] De Touqueville, Vol. I, Democracy In America, p. 288 (Vintage Books, 1945 ed.).

[17] See Boorstin, The Americans – The Democratic Experience (1973), pp. 62-64.

tic process will have been thwarted. Perhaps the court realized that when they first promulgated the "equivalency" rule in 8-C-2.[18]

To have attended an unaccredited law school is no cardinal sin. Legions of our leading legal figures have had little or no formal training. Chief Justice Marshall, among many others, never went to law school. To say our nation would be less great were it not for him is an under-statement. Petitioner, if anything, had a surfeit of legal education – 5 years.

III.

THE INTERPRETATION OF THE "EQUIVALENCY" PROVISION OF RULE 8-C-2, BY THE SUPREME COURT OF PENNSYLVANIA, TO APPLY ONLY TO STUDENTS WHO HAVE STUDIED IN FOREIGN LAW SCHOOLS DISCRIMINATES, INVIDIOUSLY, AGAINST STUDENTS WHO ATTENDED DOMESTIC LAW SCHOOLS AND CREATES A CONCLUSIVE PRESUMPTION IN VIOLATION OF PREVIOUS DECISIONS OF THIS COURT.

The writ of certiorari should be granted to preserve uniformity in the decisional law concerning the Fourteenth Amendment. What the Supreme Court of Pennsylvania has done is create a classification which has no rational relation to the end it seeks to achieve. No doubt the legitimate end sought by the Respondent and the court is to insure the quality of lawyers; this is a proper end. The way they seek to accomplish it is, however, irrational.

The implication of their interpretation is that if one goes to a domestic law school, which could have

[18] This rule was only recently installed just a few months before Petitioner sought leave to take the bar examination.

been accredited by the A.B.A., but was not, he is not eligible to take the Pennsylvania bar examination, but if he went to a foreign school, over which the A.B.A. had no jurisdiction, he will be permitted to demonstrate the "equivalency" of his education, and so qualify for the examination.

Such an interpretation has results and consequences which are absurd. It means that a person who cannot get into a school accredited by the A.B.A. would be better advised not to go to school in America. Better, perhaps, is legal education in England, Mexico, Italy or Pakistan. This interpretation favors foreigners over citizens. While this court has in recent years given foreigners most rights American citizens have,[19] the interpretation given the "equivalency" rule breaks new ground exulting foreign citizens and foreign schools, which do not even teach our system of law, and are subject to no one's control, over American citizens and American institutions. Petitioner submits such a distinction is not rationally related to any legitimate end.

That the interpretation is in disharmony with the rest of Rule 8 is manifested by inspection of the same type of clause as applied to undergraduate schools in Rule 8-C-1.[20] At once the pervesity of the logic of Rule 8-C-2's interpretation is made plain. If consistency means anything, the words which are similar in two

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[19] See *In Re Griffiths*, 413 U.S. 717 (1973).

[20] "To qualify for the bar examination an applicant . . . shall have received an undergraduate degree of Bachelor of Arts, Bachelor of Science, or the equivalent thereof from an accredited college or university, or shall have acquired an education which, in the opinion of the State Board, is the equivalent of an undergraduate education."

provisions should be read in a similar manner. We should be obliged to read that rule as permitting a demonstration of equivalency by students who attended school over seas; but a person attending an unaccredited school is stopped from taking the bar. If such an interpretation is not made of 8-C-1 then we have had no warning from the language alone.

But the real vice of the interpretation is that it creates conclusive presumptions about students educated in foreign schools as opposed to American schools, and about foreign schools as opposed to unaccredited American law schools. Such conclusive presumptions have been denounced many times by this court.[21] The result is that a student from an unaccredited law school can never be deemed worthy enough to demonstrate his ability on the bar examination. Such invidious discrimination is unconstitutional and should be corrected.

The writ of certiorari should be granted to cure the acts of the Respondent which are at variance with the decisions of this court.

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[21] See *Vladis v. Kline*, 412, U.S. 441, 446-454 (1973).

CONCLUSION

For the reasons stated herein, petitioner prays that this petition be granted and a Writ of Certiorari issue to review the decision of the Supreme Court of Pennsylvania.

Respectfully submitted,

DAVID J. ONTELL
510 Fifth Street, N.W.
Washington, D.C. 20001
Attorney for Petitioner.

CERTIFICATE OF SERVICE

This is to certify that I have mailed three (3) copies of the Petition for Writ of Certiorari, postage prepaid, to the Respondents, State Board of Law Examiners, 2010 Two Girard Plaza, Philadelphia, Pa. 19102, this 9th day of June, 1977.

DAVID J. ONTELL

APPENDIX A

COMMONWEALTH OF PENNSYLVANIA
STATE BOARD OF LAW EXAMINERS
2110 TWO GIRARD PLAZA
PHILADELPHIA, PA. 19102

December 16, 1976

In Reply Refer to File No. 27880

Pierre Jacques Wessel, Esquire
7816 Conwell Road
Philadeophia, Pa. 19118

Dear Mr. Wessel:

Your letter of December 10, 1976 was presented to the Board on Tuesday, December 14, 1976.

The Board denied your request, inasmuch as you did not complete the study of law in a law school accredited by the American Bar Association even though you have been admitted to the Bar of the District of Columbia.

Very truly yours,

/s/ Susan L. Anderson
SUSAN L. ANDERSON
Secretary

SLA:faw

SUPREME COURT OF PENNSYLVANIA
EASTERN DISTRICT

PHILADELPHIA, 19107

March 15, 1977

George J. O'Neill, Esq.
Suite 1600-Broad Locus Building
1405 Locust Street
Philadeophia, Pa. 19102

Re: In the Matter of the Appeal of Pierre J. Wessel, Esquire from the Decision of the State Board of Law Examiners

No. 327, Miscellaneous Docket No. 21

Dear Mr. O'Neill:

This is to advise that the following Order has been endorsed on the Appeal from the Order of the State Board of Law Examiners filed in the above captioned matter:

"March 11, 1977.

Denied.

By the Court.

Mr. Justice Manderino dissents."

Very truly yours,

/s/ Sally Mrvos
Prothonotary

SM/c

cc: Pierre J. Wessel, Esq.
Susan L. Anderson, Esq.